

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

EDIZONE, L.C.,
Plaintiff,

vs.

CLOUD NINE, et al.,
Defendants.

MEMORANDUM DECISION AND
ORDER GRANTING THIRD-PARTY
DEFENDANTS ADVANCED
COMFORT TECHNOLOGIES, INC.
AND ROBERT RASMUSSEN'S
MOTION TO STRIKE

Case No. 1:04-CV-117 TS

CLOUD NINE, et al.,
Counterclaim-Plaintiffs and
Third-Party Plaintiffs,

vs.

EDIZONE, L.C.,
Counterclaim-Defendant,
and
TERRY PEARCE, et al.,
Third-Party Defendants.

On August 18, 2005, Plaintiff filed an Amended Complaint.¹ The Amended Complaint added Barry McCann dba Crossgel and/or www.crossgel.com. On September 15, 2005, Defendants and Third-Party Plaintiffs filed an Answer to the Amended Complaint.² In that Answer, Defendants made a number of stylistic changes. Defendants also made more substantive changes, such as adding Third-Party Defendants Advanced Comfort Technologies, Inc. (“ACTI”) and Robert Rasmussen to their fifth, sixth, tenth, and twelfth causes of action. ACTI and Rasmussen object, arguing that adding them to these causes of action was an attempt by Defendants to amend their Answer, which requires leave of the Court.³ Defendants respond by arguing that since McCann was added to the Amended Complaint, he does not need to seek leave of the Court to file an Answer. ACTI and Rasmussen agree that McCann does not need leave of the Court, but that the other Defendants do.

The Court agrees that Defendant McCann does not need to seek leave to file an Answer, since he has not filed a pleading previously in this matter. But if the other Defendants wish to amend their Answer, they need to seek leave of the Court, which they have not done. Therefore, the amended language in the Answer should be stricken as to all Defendants except McCann. In particular, the added references to ACTI and Rasmussen in Defendants’ and Third-Party Plaintiffs’ fifth, sixth, tenth, and twelfth causes of action are stricken. Defendants and Third-Party Plaintiffs are not precluded from seeking leave of the Court to file an Amended Answer.

¹Docket No. 168.

²Docket No. 175.

³ACTI and Rasmussen have styled this motion as a Motion to Dismiss. They have also argued, in the alternative, to have the offending language stricken from the Answer to the Amended Complaint. The Court will treat the motion as a Motion to Strike.


It is therefore

ORDERED that Third-party Defendants Advanced Comfort Technologies, Inc. and Robert Rasmussen's Motion to Strike (Docket No. 189) is GRANTED. It is further

ORDERED that the hearing set for February 22, 2006, is STRICKEN.

DATED February 15, 2006.

BY THE COURT:



TED STEWART
United States District Judge